

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	CASE NO.
CLAUSE OF DUKE ENERGY KENTUCKY,	)	2023-00012
INC. FROM NOVEMBER 1, 2020 THROUGH	)	
OCTOBER 31, 2022	)	

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN REVISED RESPONSE TO THE STAFF OF THE PUBLIC SERVICE COMMISSION’S SEPTEMBER 6, 2023 FIRST REQUEST FOR INFORMATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the identified portions of the following attachments filed in its revised response to Commission Staff’s (Staff) First Request for Information issued on September 6, 2023:

- (1) STAFF-DR-01-004 Revised Confidential Attachment

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes fuel solicitation proposals, evaluations, and rankings. The Confidential Information is not known outside of Duke Energy Corporation and was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel that is not on file with any public agency, and is not available from any commercial or other source outside of the Company. All Confidential Information is only distributed within Duke Energy Kentucky to those

who must have access for business reasons and is recognized as confidential and proprietary in the energy industry.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would

present an unfair commercial advantage to competitors of the entity that disclosed the records. The documents for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

**b. Attachments for Which Confidential Treatment is Sought**

**i. STAFF-DR-01-004 Revised Confidential Attachment**

Staff Request No. 01-004 states, in part, as follows:

List each written coal-supply solicitation issued during the last six months of the period under review.

a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended.

b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor(s). Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document shall identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

In revised response to Staff Request No. 01-004, Duke Energy Kentucky is providing STAFF-DR-01-004 Revised Confidential Attachment which includes the Company's evaluation of its coal supply solicitation that includes the responsive bids from multiple vendors. Releasing this information would make public the coal pricing from multiple vendors, disclose prices the Company evaluates through competitive solicitation, which could be used by future RFP bidders to determine how competitors price their bids thereby undermining the benefit of a competitive solicitation. Moreover, releasing this information would discourage future participation by vendors and place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers

and vendors. This information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” STAFF-DR-01-004 Revised Confidential Attachment satisfies this standard. Duke Energy Corporation’s Regulated Fuels Group is responsible for the procurement of fuel and obtaining competitive pricing. Releasing this information would give potential competitors and fuel vendors for Duke Energy Kentucky in the energy markets inside information about Duke Energy Kentucky’s fuel procurement strategy, risk mitigation actions, and tolerances; therefore, meeting the second element of the statutory standard. It also satisfies the third element, as releasing this information would harm the Company and its customers in the future as competitors and counterparties would know how Duke Energy Kentucky evaluates its fuel supply and procures fuel for its generating station. If publicly available, competitors could use this information to manipulate the market and financially harm Duke Energy Kentucky’s customers by adjusting their bidding strategies and potentially manipulating the price the Company pays for coal.

**c. Request for Confidential Treatment**

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information—if disclosed after that time—will no longer be commercially sensitive so as to impair the interests of the Company if publicly disclosed.

The Company does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

To the extent the Confidential Information becomes available to the public, whether through filings required by other agencies or otherwise, Duke Energy Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

*/s/ Rocco D'Ascenzo*

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on November 29, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>1</sup>

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*/s/Rocco O. D'Ascenzo*  
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*Counsel for Duke Energy Kentucky, Inc.*

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<sup>1</sup>*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. PSC July 22, 2021).*